

TCEQ STANDARD PERMIT REGISTRATION NO. 76818
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APPLICATION BY § BEFORE THE CHIEF CLERK'S OFFICE
RYNO MATERIALS INC. § TEXAS COMMISSION ON
CELINA, COLLIN COUNTY, TEXAS § ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS
AND REQUESTS FOR RECONSIDERATION

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the requests for a contested case hearing and requests for reconsideration submitted by persons listed herein. The Texas Clean Air Act (TCAA) § 382.056(n) requires the commission to consider hearing requests in accordance with the procedures provided in Tex. Water Code § 5.556.¹ This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A map showing the location of the site for the proposed facility is included with this response and has been provided to all persons on the attached mailing list. In addition, a current compliance history report, technical review summary, and the Air Quality Standard Permit for Concrete Batch Plants have been filed with the TCEQ's Office of Chief Clerk for the commission's consideration. Finally, the ED's Response to Public Comments (RTC), which was mailed by the chief clerk to all persons on the mailing list, is on file with the chief clerk for the commission's consideration.

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I. Application Request and Background Information

Ryno Materials Inc., (Applicant) submitted an application to the TCEQ on September 7, 2005, requesting the registration of a permanent concrete batch plant ("CBP") under a Standard Permit.² The CBP is to be located 2 miles south of Celina on County Road 53, west of Highway 289, Celina, Collin County, Texas. The Applicant is not delinquent on any administrative penalty payments to the TCEQ.

The application was declared administratively complete on September 13, 2005. The Notice of Receipt and Intent to Obtain (NORI) an Air Quality Permit was published on September 22, 2005 in the *Dallas Morning News*. Alternative Language Notice was published September 22, 2005 in *El Extra*. The Notice of Application and Preliminary Decision (NAPD) was published

¹ Statutes cited in this response may be viewed online at www.capitol.state.tx.us/statutes/statutes.html. Relevant statutes are found primarily in the Texas Health and Safety Code and the Texas Water Code. The rules in the Texas Administrative Code may be viewed online at www.sos.state.tx.us/tac/index.shtml, or follow the "Rules, Policy & Legislation" link on the TCEQ website at www.tceq.state.tx.us.

² 30 TAC § 116.611

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on January 5, 2006, in the *Dallas Morning News*. Alternative Language Notice was published January 5, 2006, in *El Extra*. A Public Meeting was held in the City of Celina on February 16, 2006, and the public comment period ended on that date. The TCEQ Enforcement Database was searched and no enforcement activities were found that are inconsistent with the compliance history. Since this application was declared administratively complete after September 1, 1999, this action is subject to the procedural requirements adopted pursuant to House Bill 801.

The ED's RTC was mailed on October 11, 2006, to all interested persons, including those who asked to be placed on the mailing list for this application and those who submitted comment or requests for contested case hearing. The cover letter attached to the RTC included information about making requests for contested case hearing or for reconsideration of the ED's decision.³ The letter also explained hearing requesters should specify any of the ED's responses to comments they dispute and the factual basis of the dispute, in addition to listing any disputed issues of law or policy.

The TCEQ received timely hearing requests during the public comment period from the following persons: Michael & Jennifer Chapman, Jeanie Ready, Jason & Christy Word, Thomas & Melissa Clarke, Marione Wood, Rhonda Detro, Old Celina, Ltd (Old Celina), Carter Ranch Homeowners Association, the City of Celina, and the Honorable Joe Jaynes, Collin County Commissioner, Precinct 3. As it is unclear whether the Honorable Joe Jaynes' request is on his own behalf or on behalf of Collin County, the ED will provide an analysis of the requests made by the Honorable Joe Jaynes as an individual and Collin County.

II. Applicable Law

The commission must assess the timeliness and form of the hearing requests, as discussed below. The form requirements are set forth in 30 TAC § 55.201(d):

(d) A hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requester's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requester believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

³ See TCEQ rules at Chapter 55, Subchapter F of Title 30 of the Texas Administrative Code. Procedural rules for public input to the permit process are found primarily in Chapters 39, 50, 55 and 80 of Title 30 of the Code.

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- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requester should, to the extent possible, specify any of the executive director's responses to comments the requester disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

The next necessary determination is whether the requests were filed by "affected persons" as defined by Tex. Water Code § 5.115, implemented in commission rule 30 TAC § 55.203. Under 30 TAC § 55.203, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Local governments with authority under state law over issues raised by the application receive affected person status under 30 TAC § 55.203(b).

However, hearing requests on a concrete batch plant standard permit are considered under § 382.058(c) of the Texas Clean Air Act (TCAA).⁴ The statute states "only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing ... as a person who may be affected." A requester who resides within 440 yards of the proposed facility has standing to request a hearing as an affected person. Therefore, it is not necessary to consider the factors listed in 30 TAC § 55.203(c) to determine affected party status. A requester's failure to meet the distance requirement of § 382.058(c) of the TCAA is an absolute bar to affected party status.

If the commission determines a hearing request is timely and fulfills the requirements for proper form, and the hearing requester is an affected person, the commission must apply a three-part test to the issues raised in the matter to determine if any of the issues should be referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The three-part test in 30 TAC § 50.211 is as follows:

- (1) The issue must involve a disputed question of fact;
- (2) The issue must have been raised during the public comment period; and
- (3) The issue must be relevant and material to the decision on the application.

The law applicable to the proposed facility may generally be summarized as follows. A person who owns or operates a facility or facilities that will emit air contaminants is required to obtain authorization from the commission prior to the construction and operation of the facility or facilities.⁵ Thus, the location and operation of the proposed facility requires authorization under

⁴ TEX. HEALTH AND SAFETY CODE, Chapter 382

⁵ TEX. HEALTH AND SAFETY CODE § 382.0518

the TCAA. Permit conditions of general applicability must be in rules adopted by the commission.⁶ Those rules are found in 30 TAC Chapter 116. In addition, a person is prohibited from emitting air contaminants or performing any activity that violates the TCAA or any commission rule or order, or that causes or contributes to air pollution.⁷ The relevant rules regarding air emissions are found in 30 TAC Chapters 101 and 111-118. In addition, the commission has the authority to establish and enforce permit conditions consistent with this chapter.⁸ The materials accompanying this response list and reference permit conditions and operational requirements and limitations applicable to this proposed facility.

III. Analysis of Hearing Requests

A. Were the requests for a contested case hearing in this matter timely and in proper form?

All hearing requests were submitted during the public comment period or during the period for requesting a contested case hearing after the close of the comment period. Furthermore, the ED has determined the hearing requests of Michael & Jennifer Chapman, Jeanie Ready, Jason & Christy Word, Thomas & Melissa Clarke, Marione Wood, Rhonda Detro, Carter Ranch Homeowners Association, Collin County, the Honorable Joe Jaynes, and the City of Celina substantially comply with all of the requirements for form in 30 TAC § 55.201(d).

Old Celina fails to provide a personal address, although Old Celina's hearing request does state property owned by Old Celina is adjacent to the property on which the proposed CBP will be located. Nevertheless, it will be difficult to determine any potential impact to Old Celina, and the ED determines the request of Old Celina does not substantially comply the requirements for form in 30 TAC § 55.201(d).

The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk that was attached to the RTC states requesters should, to the extent possible, specify any of the ED's responses in the RTC the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy.⁹ The City of Celina filed a response to the ED's RTC, stating a number of issues remain in dispute. The Honorable Joe Jaynes also filed a response within the time period allotted, but the response raised issues not previously raised during the comment period. In the absence of a response from any other of the hearing requesters or their representatives within the thirty-day period after the RTC was mailed, the ED cannot determine or speculate whether the hearing requesters continue to dispute issues of fact, or whether there are any outstanding issues of law or policy. The ED nevertheless has evaluated the merits of the requests before action is taken regarding this application. The remaining disputed issues identified by the City of Celina are addressed in the issues addressed below.

⁶ TEX. HEALTH AND SAFETY CODE § 382.0513

⁷ TEX. HEALTH AND SAFETY CODE § 382.085

⁸ TEX. HEALTH AND SAFETY CODE § 382.0513

⁹ 30 TAC § 55.201(d)(4)

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B. Are those who requested a contested case hearing in this matter affected persons?

Texas Health & Safety Code § 382.058(c) provides only those persons actually residing within 440 yards of the proposed facility may request a hearing as an affected party. None of the hearing requesters reside within 440 yards of the CBP.¹⁰ Because the requesters do not actually reside in a permanent residence within 440 yards of the proposed plant, they do not have standing to request a hearing as an affected person. Jason & Christy Word reside approximately 1,549 yards from the proposed facility. Thomas & Melissa Clarke reside approximately 1,373 yards from the proposed facility. Jeanie Ready resides approximately 1,653 yards from the proposed facility. Michael & Jennifer Chapman reside approximately 1,870 yards from the proposed facility. Marione Wood resides approximately 3,369 yards from the proposed facility. Rhonda Detro resides approximately 3,389 yards from the proposed facility. The Honorable Joe Jaynes provided an address approximately 7 miles from the proposed facility. A requester's failure to meet the distance requirement of § 382.058(c) is an absolute bar to affected party status.

The request made by Old Celina fails to provide an address for the requester. Further, the request made by Old Celina fails to specifically mention if Old Celina actually resides within 440 yards of the proposed facility. Also, the request made by Old Celina states the property adjacent to the proposed facility is not yet developed, but may be developed in the future. Therefore, Old Celina fails to meet the distance requirement of § 382.058(c).

Governmental entities with authority under state law over issues raised by the application may be considered affected persons.¹¹ However, Texas Health & Safety Code § 382.058(c) states "only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing ... as a person who may be affected." Neither the City of Celina nor Collin County provided information in their hearing requests to show how they meet the requirements for standing under Texas Health & Safety Code § 382.058(c). That is, the City of Celina and Collin County do not appear to actually reside in a permanent residence within 440 yards of the proposed plant. Therefore, the City of Celina and Collin County do not have standing to request a hearing as an affected person.

Cater Ranch Homeowners Association timely requested a hearing on behalf of its members. A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and

¹⁰ See attached map.

¹¹ 30 TAC § 55.203(b)

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- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.¹²

Cater Ranch Homeowners Association is represented by Jeanie Ready. Jeanie Ready does not actually reside within 440 yards of the proposed facility, and therefore does not have standing to request a hearing in her own right. Further, Cater Ranch Homeowners Association has not identified any members who would have standing in their own right to request a hearing. The request made by the Association must meet all the requirements of 30 TAC § 55.205(a), therefore it is not necessary to consider the other two requirements of that section. Cater Ranch Homeowners Association does not have standing to request a hearing.

C. Which issues in this matter should be referred to SOAH for hearing?

If the commission determines any of the hearing requests in this matter are timely and in proper form, and some or all of the hearing requesters are affected persons, the commission must apply the three-part test discussed in Section II to the issues raised in this matter to determine if any of the issues should be referred to SOAH for a contested case hearing. The three-part test asks whether the issues involve disputed questions of fact, whether the issues were raised during the public comment period, and whether the issues are relevant and material to the decision on the permit application, in order to refer them to SOAH.

The ED addressed all public comments in this matter by providing responses in the RTC. The cover letter from the Office of the Chief Clerk transmitting the RTC cites 30 TAC § 55.201(d)(4), which states requesters should, to the extent possible, specify any of the ED's responses in the RTC the requesters dispute and the factual basis of the dispute, and list any disputed issues of law or policy. A response was filed by the City of Celina that identified a number of disputed issues. In the absence of a response from any of the other hearing requesters within the thirty-day period after the RTC was mailed, the ED cannot determine or speculate whether the remaining issues of fact continue to be disputed by the hearing requesters, or any alleged outstanding issues of law or policy. However, the ED acknowledges the hearing requesters have one more opportunity to identify disputed issues of fact in their replies to the positions of the ED, Office of Public Interest Counsel and the Applicant regarding the hearing request. Therefore, to facilitate the commission's consideration of this matter, the ED has analyzed the remaining two parts of the test, assuming the issues raised in the comments in this matter remain disputed. The disputed issues identified by the City of Celina are included in the issues of fact listed below.

1. Twenty-five issues involving questions of fact.

The requesters raise the following issues involving questions of fact regarding the proposed operation of the Applicant's facility:

¹² 30 TAC § 55.205(a)

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1. Whether the air emissions from the proposed facility will adversely affect the health of the residents, animals, and crops in the area.
2. Whether the air emissions from the proposed facility will adversely affect air quality in the area.
3. Whether the air emissions from the proposed facility will adversely affect the environment.
4. Whether the air emissions from the proposed facility will adversely affect the public welfare or damage the public's property.
5. Whether the proposed facility will be located in an inappropriate area, in that it is too close to homes and schools.
6. Whether the air emissions from the proposed facility will adversely affect water quality in the area.
7. Whether the proposed facility will increase the amount of vehicle traffic in the area, and whether emissions from the vehicles will adversely affect air quality.
8. Whether the air emissions from the proposed facility will create nuisance conditions related to dust and odor.
9. Whether operation of the proposed facility will create nuisance conditions related to light and noise.
10. Whether operation of the proposed facility will have an adverse impact on property value in the area.
11. Whether operation of the proposed facility will have an adverse impact on the local economy and prevent new development.
12. Whether the proposed facility will use best available control technology (BACT).
13. Whether the Applicant's application for a standard permit is adequate.
14. Whether the standard permit provides adequate or appropriate monitoring to ensure compliance with the terms and conditions of the standard permit.
15. Whether the Applicant's compliance history justifies denial of the registration.
16. Whether public notice was proper and adequate.
17. Whether the Applicant correctly calculated emissions from stockpiles.
18. Whether the plot plan submitted by the Applicant is illegible, making it impossible to determine the location of roads, traffic areas, and stockpiles.
19. Whether the dust suppression methods to be utilized at the proposed facility are adequate to control dust emissions.
20. Whether the roads at the proposed facility will be cleaned and how often will they be cleaned.
21. Whether the suction shroud to be used at the facility is adequate to control dust emissions.
22. Whether road emissions will cause an exceedance of the TCEQ property line standards, and whether road emissions will cause or contribute to a nuisance condition.
23. Whether the Applicant's property will be acquired for development of a future highway project.
24. Whether the permit will be rendered moot when the Applicant's property is acquired through voluntary sale or condemnation.

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25. Whether analysis of the application and modeling of airborne emissions should have considered the highway project's effect on the Applicant's property.

2. One issue involving a question of law.

The requesters also raised the issue of whether air dispersion modeling is required for the registration of a standard permit CBP. Whether air dispersion modeling should be required for the registration of a standard permit CBP is a question of law and/or policy. Therefore, this issue should not be referred to SOAH as a disputed issue of fact.¹³

3. Were the issues raised during the public comment period?

The public comment period is defined in 30 TAC § 55.152. The public comment period begins with the publication of the Notice of Receipt and Intent to Obtain an Air Quality Permit. The end date of the public comment period depends on the type of permit. In this case, the public comment period began on September 22, 2005 and ended on February 16, 2006, the date of the public meeting. Issues 1-17 listed above upon which the hearing requests in this matter are based were raised in comments received during the public comment period. These issues may be considered by the commission. Issues 18-22 were raised by the City of Celina in a letter requesting a hearing dated February 21, 2006, and received by the Agency on February 22, 2006. Therefore, these issues were not raised during the comment period by the City of Celina, nor were these issues raised by any other requester during the comment period. Issues 23-25 were raised by the Honorable Joe Jaynes in a letter dated November 10, 2006, and received by the Agency that same date. Therefore, these issues were not raised during the comment period by the Honorable Joe Jaynes, nor were these issues raised by any other requester during the comment period. Therefore, issues 18-25 cannot be considered by the commission.

The issue of whether air dispersion modeling is required for the registration of a standard permit CBP was raised during the comment period. However, as stated above, this is an issue of law or policy, and cannot be referred to SOAH as a disputed issue of fact.

4. Whether the issues are relevant and material to the decision on the application.

In this case, the permit would be issued under the commission's authority in Tex. Water Code § 5.013(11) (assigning the responsibilities in Chapter 382 of the Tex. Health & Safety Code) and the TCAA. The relevant sections of the TCAA are found in Subchapter C, Permits. Subchapter C requires the commission to grant a permit to construct or modify a facility if the commission finds the proposed facility will use at least BACT and the emissions from the facility will not contravene the intent of the TCAA, including the protection of the public's health and physical property. In making this permitting decision, the commission may consider the applicant's compliance history. The commission by rule has also specified certain requirements for permitting. Therefore, in making the determination of relevance in this case, the commission

¹³ Texas Water Code § 5.556(d), 30 TAC § 50.211.

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should review each issue to see if it is relevant to these statutory and regulatory requirements that must be satisfied by this permit application.

The City of Celina has identified disputed issues in the RTC. In the absence of identification by the other hearing requesters of disputed issues in the RTC, the ED cannot determine which issues remain disputed. However, if the assumption is made the issues raised in the public comments continue to be disputed, the following is the ED's position on those issues. The issues identified by the City of Celina are included in the issues listed below.

1. Whether the air emissions from the proposed facility will adversely affect the health of the residents, animals, and crops in the area.

The requesters identified the issue of health impacts to humans, animals, and crops in their hearing requests.¹⁴ Whether the proposed facility will use BACT and will be protective of human health, animals, and crops is a factual issue that is relevant and material to the commission's decision on this application. The ED concludes impact of the air emissions to human health, animals, and crops is a referable issue.

2. Whether the air emissions from the proposed facility will adversely affect air quality in the area.

The requesters identified the issue of air quality in their hearing requests.¹⁵ Whether the proposed facility will be protective of ambient air quality is a factual issue that is relevant and material to the commission's decision on this application. The ED concludes impact of air emissions to ambient air quality is a referable issue.

3. Whether the air emissions from the proposed facility will adversely affect the environment.

The requesters identified the issue of the effect on the environment in their hearing requests.¹⁶ Whether the proposed facility will be protective of the environment is a factual issue that is relevant and material to the commission's decision on this application. The ED concludes impact of air emissions to the environment is a referable issue.

4. Whether the air emissions from the proposed facility will adversely affect the public welfare or damage the public's property.

The requesters identified the issue impact to the public welfare and the public's property.¹⁷ Whether the air emissions from the proposed facility will adversely affect the public welfare or damage the public's property is a factual issue that is relevant and material to the commission's

¹⁴ This issue was addressed in the ED's RTC in Response 1.

¹⁵ This issue was addressed in the ED's RTC in Responses 1 & 22.

¹⁶ This issue was addressed in the ED's RTC in Response 1.

¹⁷ This issue was addressed in the ED's RTC in Response 2.

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decision on this application. The ED concludes impact of air emissions to the public welfare and the public's property is a referable issue.

5. Whether the proposed facility will be located in an inappropriate area, in that it is too close to homes and schools.

The requesters identified the issue of site location in their hearing requests.¹⁸ The TCEQ does not have zoning authority, and it is therefore beyond the agency's power to regulate the effect of an applicant's site selection. Further, the TCEQ cannot require an Applicant to relocate, or prohibit an applicant from locating at a particular site, if they meet any specific distance limitations that are enforceable by the TCEQ. So long as the Applicant meets the applicable distance limitations, adverse impacts to human health and the environment are not expected. Whether the proposed facility will be located in an inappropriate area, in that it is too close to homes and schools is not relevant and material to the commission's decision on this application. This issue should not be referred to SOAH.

6. Whether the air emissions from the proposed facility will adversely affect water quality in the area.

The requesters identified the issue of water quality in their hearing requests.¹⁹ While the TCEQ is responsible for the environmental protection of all media (including water), the law governing air permits deals specifically with air-related issues. The scope of this air quality permit application review does not include water assessment or consideration of issues involving water quality. However, the Applicant's waste and water usage and management practices may require other authorizations from those respective agency programs. Whether the air emissions from the proposed facility will adversely affect water quality in the area is not relevant and material to the commission's decision on this application for an air permit. This issue should not be referred to SOAH.

7. Whether the proposed facility will increase the amount of vehicle traffic in the area, and whether emissions from the vehicles will adversely affect air quality.

The requesters identified the issue of traffic and emissions from traffic in their hearing requests.²⁰ The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the TCEQ does not have jurisdiction over traffic or road safety. Further, the TCEQ may regulate stationary sources of air contaminants, but has no authority to regulate mobile sources. Accordingly, the TCEQ does not have jurisdiction to consider impacts of emissions from motor vehicles when determining whether to approve a permit application. Whether this facility will increase vehicle traffic and whether emissions from the traffic will

¹⁸ This issue was addressed in the ED's RTC in Responses 3 & 7.

¹⁹ This issue was addressed in the ED's RTC in Response 6.

²⁰ This issue was addressed in the ED's RTC in Response 9.

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adversely affect air quality is not relevant and material to the commission's decision on this application. This issue should not be referred to SOAH.

8. Whether the air emissions from the proposed facility will create nuisance conditions related to dust and odor.

The requesters identified the issue of dust and odor in their hearing requests.²¹ Whether the air emissions from the proposed facility will create nuisance conditions related to dust and odor is a factual issue that is relevant and material to the commission's decision on this application. The ED concludes causing or contributing to nuisance conditions related to dust and odor is a referable issue.

9. Whether operation of the proposed facility will create nuisance conditions related to light and noise.

The requesters identified the issue of light and noise in their hearing requests.²² The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Accordingly, the TCEQ does not have jurisdiction to regulate light and noise associated with the operation of the proposed facility. Whether operation of the proposed facility will cause or contribute to light and noise pollution is not relevant and material to the commission's decision on this application. This issue should not be referred to SOAH.

10. Whether operation of the proposed facility will have an adverse impact on property value in the area.

The requesters identified the issue of property value in their hearing requests.²³ The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the TCEQ does not have zoning authority, and it is beyond the agency's power to regulate an applicant's site selection or the effect of that selection on property values. However, so long as the Applicant meets applicable distance limitations, adverse impacts to human health and the environment are not expected. Whether operation of the proposed facility will have an adverse impact on property value in the area is not relevant and material to the commission's decision on this application. This issue should not be referred to SOAH.

11. Whether operation of the proposed facility will have an adverse impact on the local economy and prevent new development.

The requesters identified the issue of impact to the local economy in their hearing requests.²⁴ Under the TCAA, the TCEQ may not consider the positive or negative impact to the local economy when evaluating a particular permit. Whether operation of the proposed facility will

²¹ This issue was addressed in the ED's RTC in Response 10.

²² This issue was addressed in the ED's RTC in Responses 10 & 11.

²³ This issue was addressed in the ED's RTC in Response 12.

²⁴ This issue was addressed in the ED's RTC in Response 13.

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have an adverse impact on the local economy and prevent new development is not relevant and material to the commission's decision on this application. This issue should not be referred to SOAH.

12. Whether the proposed facility will use best available control technology (BACT).

The requesters identified the issue of BACT in their hearing requests.²⁵ Whether the proposed facility will use BACT is a factual issue that is relevant and material to the commission's decision on this application. The ED concludes the use of BACT is a referable issue.

13. Whether the Applicant's application for the standard permit is adequate.

The requesters identified the issue of the adequacy of the application in their hearing requests.²⁶ Whether the application is adequate is a factual issue that is relevant and material to the commission's decision on this application. The ED concludes the adequacy of the application is a referable issue.

14. Whether the standard permit provides appropriate monitoring to ensure compliance with the terms and conditions of the standard permit.

The requesters identified the issue of the appropriateness of the monitoring provided for in the permit to ensure compliance with the terms and conditions of the standard permit.²⁷ Whether the permit provides for appropriate monitoring to ensure compliance with the terms and conditions of the standard permit is a factual issue that is relevant and material to the commission's decision on this application. The ED concludes the appropriateness of the monitoring provided for in the permit is a referable issue.

15. Whether the Applicant's compliance history justifies denial of the registration.

The requesters identified the issue of compliance history in their hearing requests.²⁸ Whether the Applicant's compliance history justifies denial of the application is a factual issue that is relevant and material to the commission's decision on this application. The ED concludes compliance history is a referable issue.

16. Whether public notice was proper and adequate.

The requesters identified the issue of public notice in their hearing requests.²⁹ Whether public notice of this application was proper and adequate is a factual issue that is relevant and material to the commission's decision on this application. The ED concludes notice is a referable issue.

²⁵ This issue was addressed in the ED's RTC in Response 14.

²⁶ This issue was addressed in the ED's RTC in Response 15.

²⁷ This issue was addressed in the ED's RTC in Responses 15 & 17.

²⁸ This issue was addressed in the ED's RTC in Response 16.

²⁹ This issue was addressed in the ED's RTC in Responses 32-45.

17. Whether the Applicant correctly calculated emissions from stockpiles.

The requesters identified the issue of stockpile emissions in their hearing requests.³⁰ Whether the stockpile emissions were accurately calculated is a factual issue that is relevant and material to the commission's decision on this application. The ED concludes calculation of stockpile emissions is a referable issue.

IV. Maximum Expected Duration of the Contested Case Hearing

The ED recommends the contested case hearing, if held, should last no longer than four months from the preliminary hearing to the proposal for decision.

V. Executive Director's Recommendation

The Executive Director respectfully recommends the commission:

- A. Find all hearing requests in this matter were timely filed;
- B. Find the hearing requests of Michael & Jennifer Chapman, Jeanie Ready, Jason & Christy Word, Thomas & Melissa Clarke, Marione Wood, Rhonda Detro, Carter Ranch Homeowners Association, the City of Celina, the Honorable Joe Jaynes, and Collin County satisfy the requirements for form under 30 TAC § 55.201(d). However, the hearing request of Old Celina does not satisfy the requirements for form under 30 TAC § 55.201(d);
- C. Find Michael & Jennifer Chapman, Jeanie Ready, Jason & Christy Word, Thomas & Melissa Clarke, Marione Wood, Rhonda Detro, Old Celina, Carter Ranch Homeowners Association, the City of Celina, the Honorable Joe Jaynes, and Collin County are not affected persons in this matter;
- D. If the commission finds some or all of the requesters are affected persons, refer the following issues to the State Office of Administrative Hearings:
 1. Whether the air emissions from the proposed facility will adversely affect the health of the residents, animals, and crops in the area.
 2. Whether the air emissions from the proposed facility will adversely affect air quality in the area.
 3. Whether the air emissions from the proposed facility will adversely affect the environment.
 4. Whether the air emissions from the proposed facility will adversely affect the public welfare or damage the public's property.

³⁰ This issue was addressed in the ED's RTC in Response 30.

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5. Whether the air emissions from the proposed facility will create nuisance conditions related to dust and odor.
6. Whether the proposed facility will use best available control technology (BACT).
7. Whether the Applicant's application for the standard permit is adequate.
8. Whether the standard permit provides appropriate monitoring to ensure compliance with the terms and conditions of the standard permit.
9. Whether the Applicant's compliance history justifies denial of the registration.
10. Whether public notice was proper and adequate.
11. Whether the Applicant correctly calculated emissions from stockpiles.

E. Find the issue regarding requiring air dispersion modeling for a registration of a standard permit CBP is an issue of law or policy, and therefore cannot be referred to SOAH as a disputed issue of fact.

F. Find the issues regarding location of the facility, water quality, traffic and traffic emissions, light and noise pollution, property value, the local economy, and new development raised during the comment period are not relevant and material to the decision on this air permit application.

G. Find the issues regarding the plot plan, dust suppression methods, cleaning of the roads, suction shrouds, road emissions, potential condemnation of the Applicant's property, the effect condemnation will have on the validity of the permit, and modeling to reflect future changes to the Applicant's property were not raised during the comment period.

H. Find the maximum expected duration of the contested case hearing, if held, would be four months.

EXECUTIVE DIRECTOR'S RESPONSE TO REQUESTS FOR RECONSIDERATION

30 TAC § 55.201(e) states "Any person may file a request for reconsideration of the executive director's decision. The request must be in writing and be filed by United States mail, facsimile, or hand delivery with the chief clerk within the time provided by subsection (a) of this section." This section also requires, "The request for reconsideration must expressly state that the person is requesting reconsideration of the executive director's decision, and give reasons why the decision should be reconsidered."

Old Celina

Old Celina filed a Motion for Contested Case Hearing or in the Alternative Motion for Reconsideration of the Executive Director's Preliminary Decision. Old Celina raised a number of issues similar to issues raised in prior comments. The ED shall address each issue in the order it appears in Old Celina's motion.

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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1. Old Celina states both the NORI and the NAPD failed to accurately describe the location of the Plant property, and the notices state the plant is described as located two miles south of the municipality of Celina, even though the plant property is adjacent to the municipality.

This issue is addressed in the ED's RTC in Response 35. TCEQ rules require the Applicant provide a brief description of the location of the proposed facility. The published notice describes the facility's location as two miles south of the City of Celina on County Road 53, west of Highway 289. Upon review of the map attached to this application, this appears to be an accurate description of the proposed facility's location.

2. Old Celina states the Applicant failed to publish the NORI and NAPD in a newspaper of general circulation in the municipality where the facility is to be located or the municipality nearest the location. Old Celina asserts the *McKinney Courier Gazette* is the newspaper of record for Celina, and the *Dallas Morning News* is not the newspaper of the municipality nearest the plant property.

This issue is addressed in the ED's RTC in Response 38. The TCAA and 30 TAC § 39.603(c) require notice of an air application be published in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located, or in the municipality nearest to the location or proposed location of the facility. The Applicant submitted an affidavit of publication for the NORI and the NAPD certifying the notices were published in the *Dallas Morning News*. These affidavits further certify the *Dallas Morning News* is a newspaper of general circulation in Celina, the municipality nearest to the proposed location of the facility. Further, there is no requirement to publish in the newspaper "of record" for any given municipality.

3. Old Celina states the Applicant failed to meet the sign posting requirements in TCEQ rules. Old Celina states the Applicant failed to maintain required signage until the close of the public meeting.

This issue is addressed in the ED's RTC in Response 40. 30 TAC § 39.604 contains the requirements for public notice through sign posting. 30 TAC § 39.604(b) states "The sign or signs must be in place by the date of publication of the Notice of Receipt of Application and Intent to Obtain Permit and must remain in place and legible throughout that public comment period." 30 TAC § 55.152(a)(2) states the public comment period after publication of the NORI for a concrete batch plant standard permit is 15 days. Therefore, the Applicant was required to post signs according to TCEQ rules for 15 days after the publication of the NORI. Publication of the NORI occurred on September 22, 2005, and that comment period ended on October 7, 2005. The Applicant submitted Form NSR-PN1, dated October 12, 2005, and received in the Chief Clerk's Office on October 19, 2005, verifying signs were posted in accordance with the provisions of 30 TAC § 39.604. This form also verifies bilingual signs required by the TCEQ were posted.

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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There are no sign posting requirements associated with the NAPD. Therefore the Applicant was not required to maintain the requisite signage until the end of the NAPD comment period, or the close of the public meeting.

4. Old Celina states the Applicant failed to meet the requirement to make the application available for public inspection. Old Celina states the application for this permit was combined with another application, and in doing so failed to meet the requirements of 30 TAC § 39.405(g).

This issue is addressed in the ED's RTC in Response 41. 30 TAC § 39.405(g) requires a complete copy of the application be available for review and copying at a public place in the county in which the facility is located or proposed to be located. This section also requires the application be available on the first day of newspaper publication of the NORI and remain available for the publications' designated comment period. This section further requires a copy of the complete application (including any subsequent revisions to the application) and the executive director's preliminary decision be available for review and copying beginning on the first day of newspaper publication required by this section and remain available until the commission has taken action on the application or the commission refers issues to State Office of Administrative Hearings.

The Applicant has certified a copy of the completed application was available for review and copying at the McKinney Memorial Public Library throughout the duration of the public comment period associated with the NORI. The Applicant also verified via affidavit the application and draft permit will remain at the McKinney Memorial Public Library until either the TCEQ acts on the application or the application is referred to the State Offices of Administrative Hearings for a hearing. The rules regarding public viewing allow the Applicant to make available in the same public place applications for separate projects within one county.

5. Old Celina states its property is adjacent to the property where the proposed facility will be located. Old Celina states though its property is currently undeveloped, "the granting of the Application will have a costly and negative impact on any future residential and/or commercial development of the Old Celina Property." Old Celina further states there is currently another CBP operating in the vicinity, and the potential operation of both the existing plant and the Applicant's proposed CBP will severely hinder Old Celina's use of its property.

This issue is addressed in the ED's RTC in Response 12 and Response 22. The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the TCEQ does not have zoning authority, and it is beyond the agency's power to regulate an applicant's site selection or the effect of that selection on property values or land uses. Furthermore, the TCEQ does not consider cumulative effects impacts for this type of application. However, the protectiveness review for the Standard Permit for Concrete Batch Plants determined that so long as each site meets the applicable requirements, off-property impacts are not expected; therefore, no cumulative impacts are expected.

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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In conclusion, each of the above issues has been addressed in the ED's RTC, and no new issues are raised in Old Celina's Request for Reconsideration. Therefore, the ED respectfully recommends the commission deny Old Celina's Request for Reconsideration.

The City of Celina

The City of Celina filed a Request for Reconsideration of the Executive Director's Response to Public Comment and Request for Contested Case Hearing. The City of Celina raised a number of issues similar to issues raised in prior comments. The ED shall address each issue in the order it appears in the City of Celina's request.

1. The City of Celina states the City relies on property tax revenues to support the services it provides its residents and other residents in the area. The City of Celina states property tax revenues stand to be diminished if the Applicant's proposed CBP creates nuisance conditions affecting properties within the corporate limits of the City or affects those properties by operation at less than BACT performance levels.

This issue is addressed in the ED's RTC in Response 13. The TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Therefore, the positive or negative impact to the local economy is not a factor for consideration by the TCEQ when evaluating whether to approve particular permit application.

Furthermore, the issue regarding use of BACT is addressed in the ED's RTC in Response 14. The TCAA and TCEQ rules require an evaluation of air quality permit applications to determine the facility will utilize BACT and no adverse effects to public health, general welfare, or physical property are expected to result from a facility's proposed emissions. The standard permit was developed with consideration of BACT, health impacts, and welfare impacts. BACT is based upon control measures that are designed to minimize the level of emissions from specific sources at a facility with consideration given to the technical practicability and economic reasonableness of reducing or eliminating emissions.

The primary control measures applied to this facility are: all dry material storage silos and the weigh hopper shall be equipped with a fabric filter or cartridge filter or vented to a fabric or cartridge filter system designed to meet at least 0.01 outlet grain loading (grains/dry standard cubic foot), and all silos shall be equipped with audible or visual warning devices to prevent overloading. The truck will be equipped with a suction shroud and vented to a fabric or cartridge filter system with a minimum of 4,000 actual cubic feet per minute of air. The stockpiles will be sprinkled with water to reduce fugitive emissions, and dust emissions from all in-plant roads and traffic areas associated with the operation of the concrete batch plant must be minimized at all times by either sprinkling water, treating them with dust-suppressant chemicals, or paving them with a cohesive hard surface that is maintained intact and cleaned. To reduce the nuisance potential, the standard permit includes property line setbacks to provide buffer zones and restrictions on visible fugitive emissions.

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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2. The City of Celina states the proposed CBP is in close proximity to the lands and homes of residents of Celina. The City of Celina states there is at least one person residing in a permanent residence, well within 440 yards of the proposed facility, where the City provides fire and EMS services. The City of Celina states Celina Elementary School is located within 2000 feet of the proposed CBP.

This issue is addressed in the ED's RTC in Response 7. The TCEQ does not have zoning authority, and it is therefore beyond the agency's power to regulate an applicant's site selection. Further, the TCEQ cannot require an Applicant to relocate, or prohibit an applicant from locating at a particular site, if they meet any specific distance limitations that are enforceable by the TCEQ.

3. The City of Celina states the City is concerned residents of the City and residents of Collin County residing in the City's extra-territorial jurisdiction will be adversely affected by the operations proposed by the Applicant including, but not limited to, particulate matter emissions (both PM_{10} and $PM_{2.5}$), aggregate, cement, road dust, noise, and light pollution.

These issues are addressed in the ED's RTC in Responses 1, 10, and 11. The proposed concrete batch plant was reviewed for the emission of PM. The technical requirements contained in the standard permit are designed to ensure that facilities operating under Standard Permit, Title 30 TAC § 116.611, achieve the emission standards determined to be protective of human health and the environment by the TCEQ protectiveness review. The protectiveness review determined CBP facilities operating under the standard permit would meet the requirements of standards in effect at the time, which were $400 \mu\text{g}/\text{m}^3$ (micrograms of PM per cubic meter) for an one-hour period and $200 \mu\text{g}/\text{m}^3$ for a three-hour period. The review also determined emissions from facilities operating under a standard permit will meet the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of 10 microns or less (PM_{10} ; $150 \mu\text{g}/\text{m}^3$ for a 24-hour period and $50 \mu\text{g}/\text{m}^3$ annually) and applicable TCEQ toxicology and risk assessment health effects guidelines.

All facilities emitting PM from a generic CBP were considered in the development of the standard permit. Emission rate calculations were based on emissions factors for CBPs found in the Compilation of Air Pollutant Emission Factors Manual (AP-42) developed by the EPA. Since PM and PM_{10} were the only air contaminants of concern from these plants, the PM and PM_{10} ground-level concentration standards were used to determine protectiveness as mentioned above. These standards are based upon short-term and long-term health effects considerations. Using AP-42 factors, emissions were modeled to ensure all configurations would meet the NAAQS and other standards in effect. The ground-level concentration standards are no longer in effect, however the distance limitations established under those standards remain a part of the standard permit. The distance limitations were established to ensure operation of a CBP would not adversely affect human health and the environment, regardless of the configuration of the CBP.

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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The ED has conducted a thorough review of this permit application to ensure it meets the requirements of all applicable state and federal standards. Provided the CBP is operated within the terms of the standard permit, adverse health effects are not expected.

With regard to dust, the TCEQ rule prohibiting nuisances states "no person shall discharge from any source" air contaminants which are or may "tend to be injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property."³¹ As long as the facility is operated in compliance with the terms of the air quality permit, nuisance conditions are not expected.

The NAAQS are set to address welfare effects such as visibility reduction, crop damage, and material damage. Section 302(h) of the FCAA defines effects on welfare to include effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, hazards to transportation, and impacts to personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants. Because the emissions from this facility are not expected to cause an exceedance of the NAAQS, no impact to land, livestock, crops, or visibility is expected, nor should any emissions interfere with the use and enjoyment of surrounding land.

With regard to noise and light pollution (pollution from the lighting fixtures at the facility), the TCEQ's jurisdiction is established by the TCAA and is limited to the issues set forth in that statute. Accordingly, the TCEQ does not have jurisdiction to regulate noise and light pollution associated with the operation of the proposed facility.

4. The City of Celina states given the inundation of aggregate industry facilities and plants in and around the City, a hearing should be granted in the public interest to ensure residents of the City are not being disproportionately impacted by air pollution generated by these facilities.

This issue is addressed in the ED's RTC in response 22. The area surrounding the proposed site of the CBP is within the attainment standards for PM. The standard permit restricts each authorized site to production of 300 cubic yards per hour of concrete, regardless of how many batching facilities are located at the site. The protectiveness review determined so long as each site meets the applicable requirements, off-property impacts are not expected; therefore, no cumulative impacts are expected.

5. The City of Celina states the Applicant has not shown the emissions from the proposed CBP will comply with all rules and regulations of the TCEQ, including Texas Health and Safety Code § 382.05198, and with the intent of the Texas Clean Air Act, including protection of the health and physical property of the people. The City of Celina also states there are a number of issues not properly addressed by the Applicant in its application or TCEQ in the response to comments.

³¹ 30 TAC § 101.4

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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Without more information, it is difficult for the ED to determine to which deficiencies the City of Celina is referring. However, the ED has conducted a thorough review of this application, and has determined it does meet all applicable rules and requirements. The adequacy of the application and issues regarding human health and welfare are addressed in the ED's RTC, including, but not limited to, Responses 1, 2, 4, 10, 14, and 15. The protectiveness review conducted during the development of the standard permit for CBPs determined these facilities would meet all state and federal health standards in effect at the time. If this facility operates within the terms and conditions of the permit, adverse health and welfare effects are not expected. Finally, the Applicant will be required to comply with all applicable rules and regulations, regardless of whether those standards are part of the permit.

6. The City of Celina states operation of the proposed CBP will result in a violation of ambient air quality standards. The City of Celina also states operation of the proposed CBP will result in a violation of health effects standards.

This issue is addressed in the ED's RTC in Response 1. As discussed above, the protectiveness review determined facilities operating under the standard permit will meet the NAAQS for PM₁₀. Further, provided the CBP operates within the terms of the standard permit, adverse health effects are not expected.

7. The City of Celina states the Applicant failed to submit an application with adequate information.

This issue is addressed in the ED's RTC in Response 15. The Air Quality Standard Permit for Concrete Batch Plants is authorized under the Texas Health and Safety Code Section 382.05195, which authorizes the commission to issue this standard permit for many similar facilities. In order to claim the standard permit, an applicant must comply with the following:

- Complete form (with instructions) PI-IS-CBP, "Air Quality Standard Permit Registration for Concrete Batch Plants or Concrete Batch Plants with Enhanced Controls."
- Pay a registration fee (a temporary plant that is in support of a public works project and will be sited contiguously with the right of way of that project is exempt from this fee).
- Complete Table 20 (Concrete Batch Plant) and Table 11 (Fabric Filters) for each dust collector.
- Complete the Concrete Batch Plant Standard Permit Checklist.
- Submit the appropriate plot plan, maps, and process descriptions as detailed in the PI-IS-CBP.

The Applicant submitted all the required information and documents for the standard permit application. These requirements provide adequate information necessary to determine all state and federal standards are met.

8. The City of Celina states the TCEQ fails to propose an adequate and enforceable permit.

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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This issue is addressed throughout the ED's RTC, including, but not limited to, Responses 1, 2, 4, 10, 14, 15, and 17. As stated above, the Air Quality Standard Permit for Concrete Batch Plants is authorized under the Texas Health and Safety Code Section 382.05195. The CBP standard permit was developed with consideration of BACT, health impacts, and welfare impacts. Compliance determinations and ensuring proper abatement and control are included in several portions of the CBP standard permit. Since the impacts evaluation for the CBP standard permit relied on compliance with the conditions of the standard permit, there are several requirements for recordkeeping and visible emissions limitations included throughout the permit.

In conclusion, each of the above issues has been addressed in the ED's RTC. Therefore, the ED respectfully recommends the commission deny the City of Celina's Request for Reconsideration.

The Honorable Joe Jaynes

The Honorable Joe Jaynes filed a Request for Contested Case Hearing or in the Alternative Request for Reconsideration of Executive Director's Decision. The Honorable Joe Jaynes raises a number of issues not raised during the comment period. The ED shall address each issue in the order it appears in the Honorable Joe Jaynes' request.

1. The Honorable Joe Jaynes states Collin County has been planning an outer loop highway system (Outer Loop) for several years. The Honorable Joe Jaynes states the Applicant's property will be impacted by the Outer Loop project, insofar as present roadway alignment plans contemplate that some or all of the Applicant's property will be part of the Outer Loop. The Honorable Joe Jaynes states it is relatively certain at this juncture some portion of the Applicant's property will be acquired and used for this project. The Honorable Joe Jaynes states the City of Celina has offered to purchase the Applicant's property, rather than condemn the property. The Honorable Joe Jaynes states the City of Celina has communicated to various parties it will begin condemnation proceedings immediately if the Applicant rejects the current offer to purchase the property. The Honorable Joe Jaynes states the permit will be moot as soon as legal acquisition of the property is completed by voluntary sale or condemnation.

Although this is a new issue, it is similar to other issues raised during the comment period. The issue of site selection was addressed in the ED's RTC in Responses 3, 7, and 8. Under the TCAA, the TCEQ has authority to regulate air emissions to ensure the protection of human health and the environment. However, the TCEQ does not have zoning authority, and it is therefore beyond the agency's power to regulate or resolve land use conflicts. Further, the TCEQ cannot require an applicant to relocate, or prohibit an applicant from locating at a particular site, if they meet all applicable distance limitations that are enforceable by the TCEQ.

The review of the application is limited to ensuring the proposed facility will use at least BACT, and emissions from the facility will not contravene the intent of the TCAA, including protection of the public's health and physical property. So long as the Applicant meets all applicable requirements and permit conditions, adverse impacts to human health and the environment are not expected. An applicant assumes the risk a future action may render an air permit unusable.

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

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2. The Honorable Joe Jaynes states a decision to approve the Air Quality Permit was issued by the Executive Director. The Honorable Joe Jaynes states it is unclear whether the application and subsequent analysis and modeling of airborne emissions and the impact on the public of such emissions used the current property size or a reduced property size that reflects changes made to the Applicant's property following the completion of the Outer Loop construction. The Honorable Joe Jaynes states the ED's decision should be reconsidered with additional information and modeling conducted in contemplation of the Outer Loop affecting the property.

The issue of modeling is addressed in the ED's RTC in Response 20. Air dispersion modeling was conducted during the development of the CBP standard permit. All configurations were taken into account, and the modeling determined each configuration would be protective of human health and the environment. Therefore, it is not necessary for each applicant to conduct air dispersion modeling when registering for a CBP standard permit. However, the CBP Standard Permit contains distance limitations and set-backs. So long as the Applicant continues to meet those distance limitations and set-backs, adverse impacts to human health and the environment are not expected. The review of distance limitations and set-backs is made with consideration of property lines as they exist at the time of the application. However, if the property lines change after registration of the permit, the Applicant may be required to take necessary action to ensure compliance with all applicable distance limitations.

In conclusion, the above issues were not raised during the comment period. However, some of the issues are addressed in the ED's RTC. Other issues not addressed in the ED's RTC are issues that reach beyond the jurisdiction of the TCEQ. Therefore, the ED respectfully recommends the commission deny the Honorable Joe Jaynes' Request for Reconsideration.

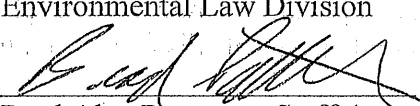
Respectfully submitted,

Texas Commission on Environmental Quality

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Stephanie Bergeron Perdue, Deputy Director
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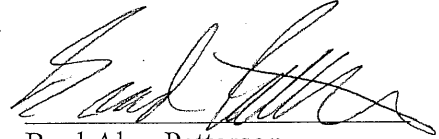
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Representing the Executive Director of the Texas
Commission on Environmental Quality

CERTIFICATE OF SERVICE

On the 12th day of January, 2007, a true and correct copy of the foregoing instrument was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, or hand delivery.



Brad Alan Patterson

CHIEF CLERK'S OFFICE

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

MAILING LIST
RYNO MATERIALS, INC.
DOCKET NO. 2006-1947-AIR; PERMIT NO. 76818

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ATTACHMENT A

Air Quality Standard Permit for Concrete Batch Plants

Air Quality Standard Permit for Concrete Batch Plants

Effective Date July 10, 2003

This air quality standard permit authorizes concrete batch plant facilities which meet all of the conditions listed in paragraphs (1) through (3) and one of paragraphs (4), (5) or (6). If a standard permit registration is based on paragraphs (4), (5), or (6) and changes are proposed which change the paragraph under which the facility will be constructed and operate, the concrete batch plant must reapply for a new standard permit.

(1) Administrative Requirements

- (A) Any concrete batch plant authorized under this standard permit shall be registered in accordance with 30 TAC 116.611, Registration to Use a Standard Permit. Owners or operators shall submit a completed current PI-1S-CBP, Table 20 and a Concrete Batch Plant Standard Permit checklist. Facilities which meet the conditions of this standard permit do not have to meet the emissions and distance limitations listed in 30 TAC 116.610(a)(1), Applicability.
- (B) Registration applications shall also comply with 30 TAC § 116.614 "Standard Permit Fees" when the registration is required to complete public notification under paragraph two of this standard permit.
- (C) No owner or operator of a concrete batch plant shall begin construction and/or operation without obtaining written approval from the executive director. The time period in 30 TAC § 116.611(b) (45 days) does not apply to facilities registering under this permit. Those facilities which are not required to comply with the public notification requirements of paragraph two should receive approval within 45 days after receipt of the registration request by the executive director. Start of construction of any facility registered under this standard permit shall comply with 30 TAC § 116.115 (b)(2)(A) and commence within 18 months of written approval from the TNRCC.
- (D) Any concrete batch plant which has registered but not constructed or filed a registration request for a permit-by-rule filed under 30 TAC §§ 106.201, 106.202, or 106.203 (relating to Permanent and Temporary Concrete Batch Plants [Previously SE 71]; Temporary Concrete Batch Plants [Previously SE 93]; and Specialty Batch Plants [Previously SE 117]) prior to the effective date of this permit will be processed under those rules.
- (E) Applicants are not required to submit air dispersion modeling as a part of any concrete batch plant standard permit application.
- (F) Records shall be maintained on-site for the following:
 - (i) production rates for each hour of operation which demonstrate compliance with the most applicable of paragraphs (4)(A), (5)(B) and (C), or (6)(C) and (D); and
 - (ii) production and other records as required by 30 TAC §§ 101.6-101.7 and by (1)(F)(i) of this standard permit shall be kept for lesser of either the most recent rolling 24-month period or the duration of operation at a given site.

(2) Public Notice

Unless the facility is to be a temporary concrete plant, as defined in paragraph five of this permit, which is located in, or contiguous to, the right-of-way of a public works project, public notice must be conducted. Notification must follow the requirements in 30 TAC Chapter 39, Subchapters H & K. In addition, sign posting must be performed following the requirements of 30 TAC § 39.604. The signs shall be headed by the words "PROPOSED AIR QUALITY STANDARD PERMIT".

(3) General Requirements

- (A) All cement/flyash storage silos and weigh hoppers shall be equipped with a fabric or cartridge filter or vented to a fabric or cartridge filter system.
- (B) Fabric filters and collection systems shall meet all of the following:
 - (i) any fabric or cartridge filter, any fabric or cartridge filter system, and any suction shroud shall be maintained and operated properly with no tears or leaks;
 - (ii) all filter systems (including any central filter system) shall be designed to meet at least 0.01 outlet grain loading (grains/dry standard cubic foot);
 - (iii) all filter systems, mixer loading, and batch truck loading emissions control devices shall meet a performance standard of no visible emissions exceeding 30 seconds in any six-minute period as determined using U.S. Environmental Protection Agency (EPA) Test Method (TM) 22; and
 - (iv) when cement or flyash silos are filled during non-daylight hours, the silo filter system exhaust shall be sufficiently illuminated to enable a determination of compliance with the visible emissions requirement in (3)(B)(iii) of this permit.
- (C) Conveying systems for the transfer of cement/flyash shall meet all of the following:
 - (i) conveying systems to and from the storage silos shall be totally enclosed, operated properly, and maintained with no tears or leaks; and
 - (ii) these systems, except during cement/flyash tanker connect and disconnect, shall meet a performance standard of no visible emissions exceeding 30 seconds in any six-minute period as determined using EPA TM 22.
- (D) A warning device shall be installed on each bulk storage silo. This device shall alert operators in sufficient time prior to the silo reaching capacity during loading operations, so that the loading operation can be stopped prior to filling to such a level as to potentially adversely impact the pollution abatement equipment. Any filling of the silo resulting in failure of the abatement system, or visible emissions in excess of paragraph (3)(B)(iii) of this standard permit, must be documented and reported following the requirements of 30 TAC § 101.6 or 30 TAC § 101.7, as appropriate.
- (E) Dust emissions from all in-plant roads and traffic areas associated with the operation of the concrete batch plant must be minimized at all times by at least one of the following methods:
 - (i.) covered with a material such as, but not limited to, roofing shingles or tire chips (when used in combination with (ii) or (iii) of this subsection);

- (ii) treated with dust-suppressant chemicals;
 - (iii) watered; or
 - (iv) paved with a cohesive hard surface that is maintained intact and cleaned.
- (F) All stockpiles shall be sprinkled with water, dust-suppressant chemicals, or covered, as necessary, to minimize dust emissions.
- (G) Spillage of materials used in the batch shall be immediately cleaned up and contained or dampened so that dust emissions are minimized.

(4) Additional Requirements for Concrete Batch and Specialty Batch Concrete, Mortar, Grout Mixing, or Pre-cast Concrete Products Plants

- (A) Site production shall not exceed 30 cubic yards per hour.
- (B) As an alternative to the requirement in paragraph (3)(A) of this section, the cement/flyash weigh hopper may be vented inside the batch mixer.
- (C) Dust emissions at the batch mixer feed shall be controlled by one of the following:
 - (i) a spray device which eliminates visible emissions;
 - (ii) a pickup device delivering air to a fabric or cartridge filter;
 - (iii) an enclosed batch mixer feed such that no visible emissions occur; or
 - (iv) conducting the entire mixing operation inside the enclosed process building such that no visible emissions from the building occur during mixing activities.
- (D) Except for incidental traffic, vehicles used for the operation of the concrete batch plant may not be operated within 25 feet of any property line, except for entrance and exit to the site. In lieu of meeting this distance requirement, roads and other traffic areas must be bordered by dust preventive fencing or other barrier along all traffic routes or work areas within the 25-foot specified buffer area. These borders shall be constructed to a height of at least 12 feet.

(5) Additional Requirements for Temporary Concrete Plants

For the purposes of this section, a temporary concrete plant is one that occupies a designated site for not more than 180 consecutive days or supplies concrete for a single project (single contract or same contractor for related project segments), but not other unrelated projects.

- (A) Site production shall be limited to no more than 300 cubic yards per hour.
- (B) Dust control at the truck drop or mixing point shall comply with one of the following:
 - (i) Facilities which occupy a site for less than 180 consecutive days and have production rates less than 200 cy/hr may load rotary mix trucks through a discharge spout equipped with a water fog ring having low-velocity fog nozzles spaced to create a continuous fog curtain that minimizes dust emissions. If a water fog ring is used at the truck drop point, the visible emissions limitations (and associated compliance determination methods) of subsection (3)(B)(3) and (4) must be met.

- (ii) All other facilities must use a suction shroud and fabric filter /cartridge filter system. The suction shroud or other pickup device shall be installed at the batch drop point (drum feed for central mix plants) and vented to a fabric or cartridge filter system with a minimum of 4,000 actual cubic feet per minute of air and must meet subsection (3)(B).
- (C) All of the following applicable distance limitations must be met. For concrete batch plants which supply concrete for a single public works project, the "property line" measurements for purposes of compliance with this standard permit and 30 TAC § 111.155 shall be made to the outer boundaries of the designated public property, roadway project and associated rights-of-way.
 - (i) The suction shroud baghouse exhaust or truck drop point shall be located at least 100 feet from any property line.
 - (ii) For those facilities with a water fog ring, the truck drop point shall be a minimum of 300 feet from the nearest non-industrial receptor.
 - (iii) Stationary equipment, stockpiles, or vehicles used for the operation of the concrete batch plant (except for incidental traffic and the entrance and exit to the site) may not be located or operated, respectively, within the following specified distances from any property line:
 - (iv) for those facilities with production rates less than or equal to 200 cubic yards per hour, at least 25 feet; and
 - (v) for those facilities with production rates more than 200 and less than or equal to 300 cubic yards per hour, at least 50 feet.
- (D) In lieu of meeting the distance requirements for roads and stockpiles of (5)(C)(iii), the following may be followed:
 - (i) roads and other traffic areas within the buffer distance must be bordered by dust suppressing fencing or other barrier along all traffic routes or work areas. These borders shall be constructed to a height of at least twelve (12) feet; and
 - (ii) stockpiles within this buffer distance must be contained within a three-walled bunker which extends at least two (2) feet above the top of the stockpile.
- (E) The owner or operator of a temporary concrete plant that has previously been determined by the commission to be in compliance with the technical requirements of the standard permit in effect at the time of registration, which supplies concrete to a public works project and is located in or contiguous to the right of way of that public works project may, in lieu of the registration requirement in subsection(1)(A) of this standard permit, register by notifying the appropriate TCEQ regional office and any local air pollution control agency having jurisdiction in writing at least 30 calendar days prior to locating at the site. The notification shall include the owner and, if applicable, the operator's name, address, and phone number as well as the physical description of the site, scaled plot plan of site with location of equipment authorized by this standard permit, concrete plant serial number, account number or regulated entity number, expected hours of operation, expected date of arrival on site and expected date to vacate the site, a completed Table 20,

and a Concrete Batch Plant Standard Permit Checklist. Temporary concrete plants that do not supply concrete to a public works project must apply for a new registration under subsection (1)(A) of this standard permit in order to relocate at a new site.

(6) Additional Requirements for Other Concrete Plants

- (A) Site production shall be limited to no more than 300 cubic yard per hour.
- (B) A suction shroud or other pickup device shall be installed at the batch drop point (drum feed for central mix plants) and vented to a fabric or cartridge filter system with a minimum of 4,000 actual cubic feet per minute of air.
- (C) All entry and exit roads and main traffic routes associated with the operation of the concrete batch plant (including batch truck and material delivery truck roads) shall be paved with a cohesive hard surface that can be maintained intact and shall be cleaned. All batch trucks and material delivery trucks shall remain on paved surface when entering, conducting primary function, and leaving the property. Other traffic areas must comply with the control requirements of paragraph (3)(E).
- (D) The following distance limitations must be met:
 - (i) the suction shroud baghouse exhaust shall be at least 100 feet from any property line;
 - (ii) stationary equipment, stockpiles, or vehicles used for the operation of the concrete batch plant (except for incidental traffic and the entrance and exit to the site) may not be located or operated, respectively, within the following specified distances from any property line:
 - (iii) for those facilities with production rates less than or equal to 200 cubic yards per hour, at least 25 feet; and
 - (iv) for those facilities with production rates more than 200 and less than or equal to 300 cubic yards per hour, at least 50 feet.
- (E) In lieu of meeting the distance requirements for roads and stockpiles of (5)(C)(ii), the following may be followed:
 - (i) roads and other traffic areas within the buffer distance must be bordered by dust suppressing fencing or other barrier along all traffic routes or work areas. These borders shall be constructed to a height of at least 12 feet; and
 - (ii) stockpiles within this buffer distance must be contained within a three-walled bunker which extends at least two feet above the top of the stockpile.

ATTACHEMENT B

Technical Review Summary

CONCRETE BATCH PLANT STANDARD PERMIT REVIEW ANALYSIS & TECHNICAL REVIEW

Company: Ryno Materials Inc. Permit No.: 76818
City: Celina Project No.: 117922
County: Collin Account No.:
TCEQ Date Received: September 07, 2005 Regulated Entity No.: RN104748710
Project Reviewer: Ms. Shelley Stratmann Customer Reference No.: CN602832461
Site Address: 2 miles south of Celina on County Road 53 west of Highway 289

INFORMATION RECEIVED:

X	PI-S-CBP	N/A	Table 29 (If applicable)
X	Franchise Tax Certificate	X	Location Description
X	CBP Standard Permit Checklists	X	Area Map
X	Tables 11 for each Fabric Filter	X	Plot Plan
X	Table 20	X	Emissions Information

POWER SOURCE INFORMATION:

Is this facility utilizing an Engine or Generator? No

DEFICIENCIES:

Above items missing or incomplete? Yes
Date company notified of deficient items? 09/16/2005
Comments: **Conflicting representations of number of silos on Table 20 and Plot Plan.**
Date registration claim complete: 09/20/2005

PUBLIC NOTICE INFORMATION:

Public Notice Information Required? Yes
Has the applicant submitted information that indicates that the proposed plant site is adjacent and contiguous to the right of way of a public works project? No

PUBLIC NOTICE INFORMATION:

§39.403 Date Administrative Complete: 09/13/2005
Small Business Source? Yes
§39.418 Date 1st Notice and legislator letters mailed: 09/13/2005
§39.603 Date Published in Newspaper: 09/22/2005 in Dallas Morning News
Pollutants: **Particulate matter including (but not limited to) aggregate, cement, and road dust.**
Date Affidavits/Copies received: 09/30/2005
Bilingual notice required? Yes
Language: **Spanish**
Date Published: 09/22/2005 in El Extra Spanish Newspaper
Date Affidavits/Copies received: 09/30/2005
§39.419 2nd Public Notification required?: Yes
Date 2nd Public Notice mailed: 12/22/2005
Preliminary Determination Issue
§39.603 Date Published: 01/05/2006 in Dallas Morning News
Date Affidavits/Copies received: 01/13/2006
Bilingual notice required? Yes
Language: **Spanish**
Date Published: 01/05/2006 in El Extra Spanish Newspaper
Date Affidavits/Copies received: 01/13/2006

PUBLIC COMMENT INFORMATION:

Public Comments Received? Yes
Meeting requested? Yes Hearing requested? Yes
Was the request(s) withdrawn? No
If not, was a public meeting(s) held? Yes Date of public meeting: 02/16/2006
Was the hearing request(s) withdrawn? No Date withdrawn: N/A
If no, was the hearing held? ?

CONCRETE BATCH PLANT STANDARD PERMIT REVIEW ANALYSIS & TECHNICAL REVIEW

Regulated Entity Number: RN104748710

Page 2

If no, was the hearing request denied by the commission?

Date of hearing or commission agenda? Agenda scheduled for 02/07/2007

Comments:

RESPONSE TO COMMENT (RTC) INFORMATION:

RTC received by OCC: Yes

Date RTC received by OCC: 10/05/2006

Final Action letters sent to all commenters: Pending

COMPLIANCE HISTORY:

In accordance with 30 TAC Chapter 60, a compliance history report was reviewed on: 02/14/2006

Was an evaluation for Federal Orders conducted on this company? Yes

The compliance period was from 09/07/2005 to 09/07/2000

Was the application received after September 1, 2002? Yes

If yes, what was the site rating & classification? **3.01 (Average by Default)** Company rating & classification? **3.01 (Average by Default)**

Has the permit changed on the basis of the compliance history or rating? No

Is the permit recommended to be denied or has the permit changed on the basis of compliance history or rating? No

RECOMMENDATIONS:

All Conditions of Standard Permit Satisfied? Yes

Final Action: Issue

Comments:

ATTACHEMENT C

Compliance History Report

Compliance History

Customer/Respondent/Owner-Operator:	CN602832461 Ryno Materials, Inc.	Classification: AVERAGE BY DEFAULT	Rating: 3.01
Regulated Entity:	RN104748710 CELINA SITE CBP 2	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	AIR NEW SOURCE PERMITS REGISTRATION		76818
Location:	APPROX 2 MI SOUTH OF CELINA ON COUNTY RD 53 Rating Date: 9/1/2006 Repeat Violator: NO WEST OF HWY 289		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	January 08, 2007		
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
Compliance Period:	September 07, 2000 to September 07, 2005		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	N/A	Phone:	N/A

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | No |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- | | | |
|------------------------|---|--|
| A. | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. | |
| | N/A | |
| B. | Any criminal convictions of the state of Texas and the federal government. | |
| | N/A | |
| C. | Chronic excessive emissions events. | |
| | N/A | |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) | |
| E. | Written notices of violations (NOV). (CCEDS Inv. Track. No.) | |
| | N/A | |
| F. | Environmental audits. | |
| | N/A | |
| G. | Type of environmental management systems (EMSs). | |
| | N/A | |
| H. | Voluntary on-site compliance assessment dates. | |
| | N/A | |
| I. | Participation in a voluntary pollution reduction program. | |
| | N/A | |
| J. | Early compliance. | |
| | N/A | |
| Sites Outside of Texas | | |
| | N/A | |

Compliance History

Customer/Respondent/Owner-Operator: CN602832461 Ryno Materials, Inc. Classification: AVERAGE BY DEFAULT Rating: 3.01

Regulated Entity: RN104748710 CELINA SITE CBP 2 Classification: AVERAGE BY DEFAULT Site Rating: 3.01

ID Number(s): AIR NEW SOURCE PERMITS REGISTRATION: 76818

Location: APPROX 2 MI SOUTH OF CELINA ON COUNTY RD 53 WEST OF HWY 289 Rating Date: 9/1/2006 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: January 08, 2007

Agency Decision Requiring Compliance History: Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.

Compliance Period: September 07, 2005 to January 08, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: N/A Phone: N/A

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. N/A
- B. Any criminal convictions of the state of Texas and the federal government. N/A
- C. Chronic excessive emissions events. N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.) N/A
- F. Environmental audits. N/A
- G. Type of environmental management systems (EMSs). N/A
- H. Voluntary on-site compliance assessment dates. N/A
- I. Participation in a voluntary pollution reduction program. N/A
- J. Early compliance. N/A

Sites Outside of Texas

N/A

ATTACHEMENT D

Maps Depicting Location of the Facility

Ryno Materials, Inc. Permit No. 76818

Map requested by TCEQ Office of Legal Services
for Commissioners Agenda

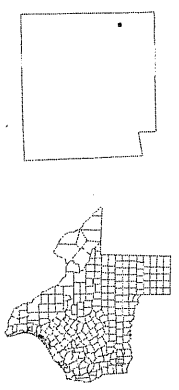
Approx. 7 miles
The Honorably
Joe Jaynes

Ryno
Materials, Inc.

440 Yard Radius

- Key**
- 1 - Thomas & Melissa Clarke
200 Dartmoor Dr. (Approx. 1373 yards from proposed plant)
 - 2 - Jason & Christy Word
400 Tarpan Tr. (Approx. 1569 yards from proposed plant)
 - 3 - Jeanie Ready
402 Comenara Tr. (Approx. 1653 yards from proposed plant)
 - 4 - Michael & Jennifer Chapman
425 Dartmoor Dr. (Approx. 1870 yards from proposed plant)
 - 5 - Marione Wood
3779 Hay Meadow St. (Approx. 3369 yards from proposed plant)
 - 6 - Rhonda Detro
3928 Preston Hills (Approx. 3389 yards from proposed plant)
- Not on map (Approx. 7 miles from proposed plant):
The Honorable Joe Jaynes
210 S. McDonald St. Suite 626
McKinney, TX

(Collin County)

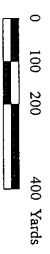


The proposed concrete batch plant is located in Collin County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of Collin County in the state of Texas. Collin County is shaded in red.



Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

June 12, 2006



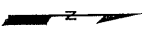
Projection: Texas Statewide Mapping System
(TSMSS)
Scale 1:16,233

- Legend**
- Ryno Materials, Inc.
 - 440 Yard Radius
 - Protestant

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is tx085_1-1.

This map depicts the following:

- (1) The approximate location of the proposed Ryno Materials Inc. concrete batch plant located in Collin County. This facility is labeled "Ryno Materials, Inc."
- (2) A circle and arrow representing a 440 yard radius from the proposed facility. This is labeled "440 Yard Radius."
- (3) Numbers which correspond to the names in the key.



This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy, or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

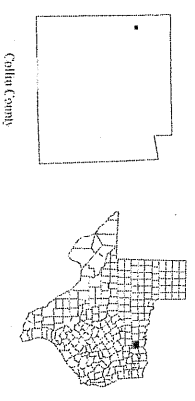
Ryno Materials, Inc.
Permit No. 76818
 Map requested by TCEQ Office of Legal Services
 for Commissioners Agenda

Ryno Materials Inc.

440 Yard Radius



Plant Structures
 Stockpiles

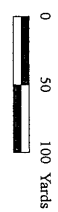


The proposed concrete batch plant is located in Collin County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of Collin County in the state of Texas. Collin County is shaded in red.



Texas Commission on Environmental Quality
 GIS Team (Mail Code 197)
 P.O. Box 13087
 Austin, Texas 78711-3087

June 12, 2006



Projection: Texas Statewide Mapping System (TSMs)
 Scale 1:3,092

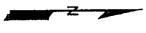
Legend

- Facility Structures
- 440 Yard Radius

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is R085_1-1.

This map depicts the following:

- (1) The approximate location of the proposed Ryno Materials Inc. concrete batch plant structures and stockpiles located in Collin County. These are labeled "Stockpiles" and "Plant Structures".
- (2) A circle and arrow representing a 440 yard radius from the proposed structures and stockpiles. This is labeled "440 Yard Radius".



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